

BEFORE THE
TENNESSEE STATE BOARD OF EQUALIZATION

In Re: Leadership Memphis)
 Personal Property Account No. P-170554) Shelby County
Back assessment/Reassessment)
 Tax years 2002, 2003, 2004, 2005)

INITIAL DECISION AND ORDER

Statement of the Case

In March, 2006, the Shelby County Assessor of Property ("Assessor") certified the following back assessments/reassessments of the subject property in the name of Leadership Memphis:

Tax Year	Original Assessment	Revised Assessment	Back Assessment/ Reassessment
2002	\$0	\$15,360	\$15,360
2003	\$0	\$13,140	\$13,140
2004	\$0	\$11,520	\$11,520
2005	\$0	\$ 9,960	\$ 9,960

Anna P. Howell, CPA, of Thompson Dunavant, PLC (Memphis) timely appealed all of the above back assessments/reassessments on behalf of the property owner directly to the State Board of Equalization ("State Board") pursuant to Tenn. Code Ann. section 67-1-1005(b). The stated ground of each appeal was that the property in question "should be lawfully exempt from assessment and taxation."

On April 21, 2006, Leadership Memphis filed an application for exemption of the subject property with the State Board of Equalization ("State Board"). By letter dated April 2, 2007, State Board staff attorney Sabrina Williams notified Leadership Memphis that its application had been approved, effective January 1, 2006.

In a letter to the State Board dated April 9, 2007, Ms. Howell took exception to the effective date of the approved exemption.

The undersigned administrative judge conducted a hearing of these matters on April 17, 2007 in Memphis. In attendance at the hearing were David Williams, President/CEO of Leadership Memphis; Ms. Howell; and Assessor's representatives John Zelinka, Esq. and Eric Beaupre, CPA.

Findings of Fact and Conclusions of Law

Leadership Memphis is a Tennessee nonprofit corporation that was created in 1978 “to foster interest in and promote educational, civic, and social work in the community, to promote the education and training of persons from the various geographic, ethnic, occupational and economic segments of the community for leadership and involvement in public affairs, to establish channels of communication among community leaders, and to do all other things incidental or desirable in connection therewith.” Charter, paragraph 5. As a “501(c)(3)” organization, Leadership Memphis is exempt from federal income taxation.

In 1990, Leadership Memphis submitted an application for exemption of the tangible personal property used in its office, which at that time was located on Poplar Avenue in the Bluff City.¹ That application was approved by the State Board designee, effective January 1, 1990.

By 2002, Leadership Memphis had moved into leased space on South Main Street in the downtown area. In tax years 2003 through 2005, the corporation (or its authorized agent) filed tangible personal property schedules with the Assessor’s office wherein it reported “\$0” values. Yet, inexplicably, an application for exemption of the personal property housed in Leadership Memphis’s new business location was not filed with the State Board until April of 2006 – *after* an audit which led to the aforementioned back assessments had been completed.² According to the application, which was completed by Carolyn Head, CPA, Leadership Memphis had acquired this personal property between 1999 and 2005. Ms. Head also indicated on the application that the organization had not previously made application for this or any other property.

In these appeals, Leadership Memphis does not really dispute the Assessor’s valuation of the subject property.³ Rather, the appellant maintains that the audit “opened” tax years 2002 through 2005 so as to justify its claim of property tax exemption for that period.

The Assessor’s representatives conceded that the back assessment/reassessment for tax year 2003 was not initiated before the deadline prescribed in Tenn. Code Ann. section 67-1-

¹The personal property that was the subject of Leadership Memphis’s 1990 application was identified as Account No. 094957.

²In a letter dated February 27, 2002 and addressed to The Poulin Group (a CPA firm then under contract with Leadership Memphis), the Assessor’s office advised that Leadership Memphis would need to file an application for exemption of the subject property. That letter was apparently never transmitted to Leadership Memphis. The subsequent audit findings were issued by Mr. Beaupre on January 11, 2006. Curiously, Ms. Howell asserted in her written presentation at the hearing that the application for exemption of the subject property “was pending when the audit assessment was issued.” In fact, as previously mentioned, the application in question was filed after the Assessor’s certification of the disputed back assessments.

³As was noted at the hearing, a certified public accountant is authorized to act as the taxpayer’s agent in a contested case hearing before the State Board “[w]here the **only** issue of an appeal is the **valuation** of tangible personal property.” Tenn. Code Ann. section 67-5-1514(c)(1)(C). [Emphasis added.]

1005(a).⁴ Mr. Zelinka stressed, however, that even property owned and used by a “501(c)(3)” organization (such as Leadership Memphis) is legally assessable until and unless the organization applies for and obtains exemption of such property in accordance with Tenn. Code Ann. section 67-5-212.

Tenn. Code Ann. section 67-5-212(b) provides (in relevant part) that:

- (1) ...No property shall be exempted from property taxes under (sections 67-5-212, 67-5-207, 67-5-213, or 67-5-219), unless the application has been approved in writing by the board. **A separate application shall be filed for each parcel of property for which exemption is claimed....**
- (2) ...Upon approval of exemption, it is not necessary that the applicant reapply each year, but the exemption shall not be transferable or assignable and the applicant shall promptly report to the assessor any change in the use or ownership of the property that might affect its exempt status....
- (3) ...If the application is approved, the exemption will be effective as of January 1 of the year of application or as of the date the exempt use of such parcel began, **whichever is later....**⁵

[Emphasis added.]

Having departed the Poplar Avenue site of the personal property previously exempted in 1990, Leadership Memphis was surely obliged to submit a new application *to the State Board* for exemption of the personal property used (or held for use) at its present location.⁶ For control and record-keeping purposes, it is essential that an assessor’s personal property identification number “be linked to the property identifier of the real property where the personal property is located, where such can be determined.” State Board Rule 0600-5-.03(4)(e). That no officer, director, or employee of Leadership Memphis may have been personally apprised or actually aware of the separate application requirement is immaterial.

⁴Except in the event of actual fraud, fraudulent misrepresentation, collusion, or failure to file the required reporting schedule, a back assessment or reassessment must be initiated by September 1 of the year following the tax year in which the original assessment was made. This statute of limitations is tolled for the duration of the audit (i.e., from the issuance of the notice of audit until the issuance of the audit findings). Tenn. Code Ann. section 67-1-1005(d).

⁵During its 2004 session, the state legislature enacted the following exception to this effective date rule:

If a religious institution acquires property previously approved for a religious use exemption, or property to replace its own property previously approved for a religious use exemption, then the effective date of exemption shall be five (5) years prior to the date of application, or the date the acquiring institution began to use the property for religious purposes, whichever is later.

Acts 2004, ch. 531, section 2.

⁶The evidence of record suggests that the preparer of the schedules on which \$0 values were claimed may have considered those documents to be the equivalent of applications for property tax exemption.

Audits of tangible personal property accounts, of course, are conducted at the expense of taxing jurisdictions mainly for the purpose of discovering any unreported or undervalued property. To be sure, an audit may occasionally benefit a personal property taxpayer by revealing overvalued, non-reportable, or double-assessed assets before the deadline for amending the taxpayer's return. But the administrative judge knows of no precedent to the effect that the audit of a personal property account enables the taxpayer to interpose a claim of exemption under Tenn. Code Ann. section 67-5-212 for a period prior to the year in which the required application to the State Board was filed.

Finally, as an administrative agency having only those powers delegated by the legislature, the State Board lacks the authority to modify or waive the quoted provisions of the law concerning effective dates of exemption. See, e.g., Trustees of Church of Christ, Hwy. 45E (Obion County, Final Decision and Order, January 9, 1993).

Order

It is, therefore, ORDERED that: (a) the back assessments/reassessments for tax years 2002, 2004, and 2005 be affirmed; (b) the back assessment/reassessment for tax year 2003 be canceled; and (c) the subject property be exempt from taxation effective January 1, 2006.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 4th day of May, 2007.



PETE LOESCH
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: David Williams, President/CEO, Leadership Memphis
Anna P. Howell, CPA, Thompson & Dunavant, PLC
Eric Beaupre, CPA, Personal Property Department, Shelby County Assessor's Office
John Zelinka, Attorney, Shelby County Assessor's Office
Tameaka Stanton-Riley, Appeals Manager, Shelby County Assessor's Office

LEADERSHIP.DOC